

MARINO, TORTORELLA & BOYLE, P.C.

KEVIN H. MARINO
JOHN D. TORTORELLA
JOHN A. BOYLE

ROSEANN BASSLER DAL PRA*
EREZ J. DAVY*
ANTHONY J. TAGLIAFERRO
MICHAEL J. FLYNN

ATTORNEYS AT LAW
437 SOUTHERN BOULEVARD
CHATHAM, NEW JERSEY 07928-1488
TELEPHONE (973) 824-9300
FAX (973) 824-8425
www.khmarino.com

875 THIRD AVENUE, 21ST FLOOR
NEW YORK, NEW YORK 10022
TELEPHONE (212) 307-3700
FAX (212) 542-3790
e-mail: jtortorella@khmarino.com
*OF COUNSEL

February 28, 2025

VIA ECF

Honorable Rukhsanah L. Singh, U.S.M.J.
United States District Court
District of New Jersey
Clarkson S. Fisher Building & U.S. Courthouse
402 East State St.
Trenton, NJ 08608

Re: *In re: Insulin Pricing Litigation*, No. 2:23-md-03080-BRM-RLS
MDL No. 3080 | Custodian & Search Term Proposal

Dear Judge Singh:

We write on behalf of Defendants Caremark Rx, LLC, Caremark LLC, and Caremark PCS Health, LLC (collectively, “CVS Caremark”) in response to the Court’s direction that the parties “propose their respective search terms and custodians by way of letter addressed to [the Court] filed by February 28.” ECF No. 426.

CVS Caremark’s custodian proposal is attached as Appendix A. These twenty-one (21) custodians are proposed for the relevant time period, as described in Case Management Order No. 10, except as otherwise noted. CVS Caremark’s search term proposal is attached as Appendix B. As described in more detail below, CVS Caremark’s proposals reflect significant compromises with Plaintiffs and are more than sufficient to satisfy its Master Discovery obligations in this matter.

Custodian Proposal

After engaging in lengthy and good-faith negotiations with Plaintiffs, CVS Caremark proposes 21 custodians covering a wide range of business activities purportedly relevant to Plaintiffs’ claims.

Trade Relations. The subject of this lawsuit centers on the price of insulin and the PBMs’ purported “conspiracy” with the Manufacturer Defendants. The relevant department at CVS Caremark is the “Trade Relations” department, which negotiates with manufacturers, including the Manufacturer Defendants, regarding rebates for pharmaceutical products. To that end, CVS Caremark has proposed the trade relations employee responsible for insulin drugs who would have contact with the relevant manufacturers (referred to as “Insulin Category Captains”) for the entire relevant time period. Those Category Captains are Patti Doruff, Joseph Anderson, William Rossman, and Norman Rivera. Further, CVS Caremark has also added the primary negotiator with *each* of the Manufacturer Defendants across the entire relevant time period. Further still, in

MARINO, TORTORELLA & BOYLE, P.C.
ATTORNEYS AT LAW

Honorable Rukhsanah L. Singh, U.S.M.J.
February 28, 2025 – Page 2

response to its negotiations with Plaintiffs, CVS Caremark added custodians who were involved in insulin Medicare negotiations across the relevant time period, including Michael Schneider, Daniel Best, Andrew Zanin, and Keith Pearson. Even if this were not enough, CVS Caremark added more higher-level executive custodians covering manufacturer contracts and rebate negotiations, including Gary Loeber (an SVP of Trade Relations and EVP of Pharmaceutical Contracting and Purchasing during the relevant time period), Jason Hartzell (a Director/Executive Director of Trade Relations during the relevant time period), and Joseph Stahl (a Senior Director/VP of Trade Relations during the relevant time period).¹

Committees. Plaintiffs identified CVS Caremark’s Pharmacy & Therapeutics (“P&T”) Committee and Formulary Review Committee (“FRC”) as relevant to this litigation, because of their roles in formulary development. To accommodate Plaintiffs, CVS Caremark proposes custodian Lora Armstrong, a VP of Strategic Formulary Management who has acted as CVS Caremark’s liaison to the voting membership of the P&T Committee. As to the FRC, CVS Caremark’s proposal includes six members of that committee. Caremark proposes Domenico Gugliuzza and Aydin Sekili for the years in which they were chairs of the FRC. CVS Caremark’s proposal also includes other members of the FRC, including Joseph Anderson, Andrew Zanin, Daniel Best, and Keith Pearson.

Invoicing and Finance. Plaintiffs also have sought discovery as to CVS Caremark’s invoicing and processing of manufacturer payments or rebates. CVS Caremark’s proposal includes a custodian related to manufacturer payment invoicing: Robert Versosky (Executive Director, Trade FP&A). In response to a specific request from Plaintiffs, CVS Caremark recently added to its proposal Shivam Patel, a financial and industry analyst engaged in formulary financial modeling.

Search Term Proposal

CVS Caremark’s search term proposal greatly exceeds CVS Caremark’s discovery obligations to provide relevant information in a way that is proportional to the needs of the case. CVS Caremark’s proposal already hits on more than *one million documents*, and that current figure does not yet include every custodian identified in CVS Caremark’s proposal. Most notably, CVS Caremark has agreed to run the names of *every relevant insulin and GLP-1 drug identified by Plaintiffs’ in their Requests for Production* across each custodian it has proposed, without limiters or connectors. That extraordinary concession should account for most documents relevant to the actions in the MDL, given that the Court has already ruled that “the relevant drugs for

¹ Relatedly, we are in discussions with Plaintiffs regarding additional custodians from Zinc Health Services, LLC (“Zinc”). To that end, we have already agreed to add three Zinc custodians (two of whom are included on Exhibit A for different time periods), and we understand Plaintiffs may seek more. And CVS Caremark has further agreed to certain additional discovery related to its federal preemption defense, which the parties continue to negotiate.

MARINO, TORTORELLA & BOYLE, P.C.
ATTORNEYS AT LAW

Honorable Rukhsanah L. Singh, U.S.M.J.
February 28, 2025 – Page 3

discovery include insulin products and glucagon-like peptide receptor agonists ('GLP-1s')." CMO 10 at 2 [ECF 198].

Beyond agreeing to review every document that hits on any relevant drug name, CVS Caremark has also agreed to run a series of **150 additional search terms**, many of which include terms/strings requested by Plaintiffs. Specifically, CVS Caremark has agreed to additional terms tied to other broad insulin-related terms (such as "Insulin*", "Diabet*", and "GLP*"). These terms are tied by an "and" connector to *every* email to or from the email addresses associated with the Manufacturer Defendants, PBM Defendants, and the trade associations PhRMA and PCMA. Beyond that, these insulin terms are tied by connectors to a series of broad terms associated with this litigation, such as the names of Manufacturer and PBM Defendants, terms associated with formularies (such as "report*", "analy*", and "formular*"), pricing and rebate terms (such as "list*", "pric*", "cost*", and "rebate*") terms related to CVS Caremark's relevant committees (such as "FRC*" and "P&T*"), and terms related to utilization management, pull-through issues, so-called "diabetic harm" issues, CVS Caremark's pharmacies, and consultants. CVS Caremark has further agreed to run the names of five reports related to insulin pricing as stand-alone terms.

Plaintiffs' request² for still more terms on top of this massive set is not proportional to the needs of the case, is overly burdensome, and is unnecessarily cumulative. As we explained to Plaintiffs, their additional terms from their February 19 proposal, even on a narrower set of 15 custodians, would nearly **quadruple** the documents subject to attorney review. Indeed, Plaintiffs February 19 proposal hit on **nearly four million documents**. That would obviously impose a colossal review, and would bring this action largely to a halt for more than one year, if not longer, while documents are reviewed.³ There is no justification for such a review. And despite CVS Caremark's pressing, Plaintiffs have not articulated any specific need to add any other terms. Given that CVS Caremark has acquiesced to run every drug name independently, and over 150 additional broad terms related to the core issues in this litigation, including every communication with the Manufacturer or PBM Defendants with broad insulin-related terms, requests for additional terms should be denied.

Accordingly, CVS Caremark respectfully requests that the Court order CVS Caremark to proceed with document discovery, consistent with its custodian and search-term proposals identified in this letter, and deny Plaintiffs' unsubstantiated requests for more. To try to further reduce any disputes before the Court, CVS Caremark will continue to meet and confer with Plaintiffs. Plaintiffs sent revised proposals today at 4:36 p.m., which CVS Caremark will review

² These numbers are based on Plaintiffs' February 19 search term proposal. After 4:00 pm today, Plaintiffs provided a revised proposal that CVS Caremark is analyzing.

³ CVS Caremark is in the process of collecting additional documents for the remaining custodians. Obviously, the addition of more custodians will raise these hit counts (perhaps substantially).

MARINO, TORTORELLA & BOYLE, P.C.
ATTORNEYS AT LAW

Honorable Rukhsanah L. Singh, U.S.M.J.
February 28, 2025 – Page 4

and discuss with Plaintiffs early next week. We thank the Court for its continuing attention to this matter.

Respectfully submitted,

/s John D. Tortorella

John D. Tortorella

*Counsel for Defendants Caremark Rx, LLC,
Caremark LLC, and Caremark PCS Health,
LLC*

/s Nicholas C. Suellentrop

Nicholas C. Suellentrop

Williams & Connolly LLP

*Counsel for Defendants Caremark Rx, LLC,
Caremark LLC, and Caremark PCS Health,
LLC*

cc: Honorable Brian R. Martinotti, U.S.D.J.
All counsel of record

Appendix A – Custodians

1. Joseph Anderson
2. Patti Doruff (through May 2020)
3. Kevin Wessels (through December 2021)
4. William Rossman
5. Gary Loeber
6. Aydin Sekiki
7. Lora Armstrong
8. James Cichowski
9. Joseph Stahl (through December 2020)
10. Norman Rivera
11. Andrew Zanin
12. Daniel Best
13. Keith Pearson
14. Robert Verosky
15. Jason Hartzell (through December 2020)
16. Domenico Gugiluzza (through December 2016)
17. Rich Mercure (2012-2013)
18. Tyler Haertzen (2018-2021)
19. Michael Schneider
20. Shivam Patel
21. Jackelyn Mancini

Exhibit B – Search Terms

<p>Apidra* or Basaglar* or fiasp* or Humalog* or Humulin* or Lantus* or Levemir* or Novolin* or Novolog* or Soliqua* or Toujeo* or Aspart* or Rezvoglar* or Semglee* or Soliqua* or Toujeo* or Degludec* or Admelog* OR Ozempic* OR Tresiba* OR Trulicity* OR Victoza* OR Glargine* OR Lispro* OR Relion* OR Tanzeum* OR Mounjaro* OR Xultophy* OR Rybelsus* OR Adylxyin* OR “Insulin Therap*”</p>
<p>“Examining the Factors Driving the Rising Cost of a Century Old Drug” or “Priced Out of a Lifesaving Drug” or “The Need to Make Insulin Affordable for All Americans” or “Why is Novo Nordisk Charging Americans with Diabetes and Obesity Outrageously High Prices for Ozempic and Wegovy” or “Pharmacy Benefit Managers: The Powerful Middlemen Inflating Drug Costs and Squeezing Main Street Pharmacies” or “Inaccessible Insulin: The Broken Promise of Eli Lilly's Authorized Generic”</p>
<p>(Insulin* or antidiabetic* or "anti-diabetic*" or GLP* or diabetes* or Basal* or Detemir or Kwikpen or Lins or NovoPen or Novofine or NovoTwist or PenFill or SoloSTAR or Tanzeum or Logs or “Private Label” or T2D or Flextouch or Flexpen or Liraglutide or Lixisenatide or Semaglutide or Tirzepatide) AND ("*lilly.com" or "*novonordisk.com" or "*sanofi.com" or "*optum.com" or "*express-scripts.com" or "*phrma.org" or "*pcma.org" or “novo.dk” or “Sanofi-aventis.com” or “aventis.com” or “sanofipasteur.fr” or “optumrx.com” or “zinchealthservices.com” or uhc.com or uhg.com or unitedhealthgroup.com or evernorth.com or medco.com or thecignagroup.com or cigna.com)</p>
<p>(Insulin* or antidiabetic* or "anti-diabetic*" or GLP* or diabetes* or Basal* or Detemir or Kwikpen or Lins or NovoPen or Novofine or NovoTwist or PenFill or SoloSTAR or Tanzeum or Logs or “Private Label” or T2D or Flextouch or Flexpen or Liraglutide or Lixisenatide or Semaglutide or Tirzepatide) w/10 (Lilly or LLY or EliLilly or Novo or Nordisk or NVN or NNI or Sanofi or Aventis or SAV or SFI or Optum or Orx or ESI or "Express Scripts" or EliLilly or NVO* or PhRMA* or "Pharmaceutical Research and Manufacturers" or “Pharmaceutical Care Management Association” or “Leadership Summit” or “Pharmaceutical Company Partner” or “JP Morgan Healthcare Conference” or “Express-Scripts” or PCMA or “Pre-Read” or “Pre read” or (customer /2 exchange))</p>
<p>(Insulin* or antidiabetic* or "anti-diabetic*" or GLP* or diabetes* or Basal* or Detemir or Kwikpen or Lins or NovoPen or Novofine or NovoTwist or PenFill or SoloSTAR or Tanzeum or Logs or “Private Label” or T2D or Flextouch or Flexpen or Liraglutide or Lixisenatide or Semaglutide or Tirzepatide) w/10 (list* or pric* or</p>

AWP or WAC or cost* or rebat* or REB or discount* or incentiv* or fee* or bid* or proposal* or RFP or Arbitrage or “promotional allowances” or comparables or “price reimbursement access” or “price predictability”)
(Insulin* or antidiabetic* or "anti-diabetic*" or GLP* or diabetes* or Basal* or Detemir or Kwikpen or Lins or NovoPen or Novofine or NovoTwist or PenFill or SoloSTAR or Tanzeum or Logs or “Private Label” or T2D or Flextouch or Flexpen or Liraglutide or Lixisenatide or Semaglutide or Tirzepatide) w/10 (audit* or report* or analy* or develop* or formular* or plan*)
(Insulin* or antidiabetic* or "anti-diabetic*" or GLP* or diabetes* or Basal* or Detemir or Kwikpen or Lins or NovoPen or Novofine or NovoTwist or PenFill or SoloSTAR or Tanzeum or Logs or “Private Label” or T2D or Flextouch or Flexpen or Liraglutide or Lixisenatide or Semaglutide or Tirzepatide) w/20 ("Pharmacy and Therapeutic*" or "Pharmacy + Therapeutic*" or "P&T*" or "P & T*" or FRC* or “charter” or “recommendation report” or Rxreport” or Rx report” or “prescription drug guide” or “formulary review committee” or “strategic formulary management” or “silver script” or “Core Standard” or “Core Choice” or “Select Choice” or “Highly Controlled” or “OMA” or “RxReview”)
(Insulin* or antidiabetic* or "anti-diabetic*" or GLP* or diabetes* or Basal* or Detemir or Kwikpen or Lins or NovoPen or Novofine or NovoTwist or PenFill or SoloSTAR or Tanzeum or Logs or “Private Label” or T2D or Flextouch or Flexpen or Liraglutide or Lixisenatide or Semaglutide or Tirzepatide) w/20 (“Therapeutic Substitution” or “Therapeutic Intervention*” or “counter-promot*” or counter promot* or (fail /3 first) or “Drug Quantity” or “predictive model” or “education letter” or “Adverse Communication” or “NDC Lock” or “counter-detail*”)
(Insulin* or antidiabetic* or "anti-diabetic*" or GLP* or diabetes* or Basal*) w/5 (McKinsey or “Charles River” or Deloitte or “Advantage Point” or “Quarterline” or Putnam or KPMG or Synopia or Ballina or Ashfield or ZS OR Milliman or “Boston Consulting Group” or Redburn or “Third Party Administrator” or “Third-Party Administrator” or TPA OR Premera or Mercer or Aon)
(Insulin* or antidiabetic* or "anti-diabetic*" or GLP* or diabetes* or Basal* or Detemir or Kwikpen or Lins or NovoPen or Novofine or NovoTwist or PenFill or SoloSTAR or Tanzeum or Logs or “Private Label” or T2D or Flextouch or Flexpen or Liraglutide or Lixisenatide or Semaglutide or Tirzepatide) w/5 (Clawback* or (claw* /2 back) or claw-back* or DIR)
(Insulin* or antidiabetic* or "anti-diabetic*" or GLP* or diabetes* or Basal* or Detemir or Kwikpen or Lins or NovoPen or Novofine or NovoTwist or PenFill or

SoloSTAR or Tanzeum or Logs or “Private Label” or T2D or Flextouch or Flexpen or Liraglutide or Lixisenatide or Semaglutide or Tirzepatide) w/5 (“Pull Through” or “Pull Thru” or “Pull-Through” or “Pull-Thru” or “Co-Market*” or “Co Market*” or (Patient Transition) or (Patient Educat*) or (Provider Transition) or (Provider Educat*) or (Prescriber Transition) or (Prescriber Educat*) or (Patient Outreach) or (Provider Outreach) or (Prescriber Outreach) or (Member Educat*) or (Member Transition) or (change notification))

(Insulin* or antidiabetic* or "anti-diabetic*" or GLP* or diabetes* or Basal* or Detemir or Kwikpen or Lins or NovoPen or Novofine or NovoTwist or PenFill or SoloSTAR or Tanzeum or Logs or “Private Label” or T2D or Flextouch or Flexpen or Liraglutide or Lixisenatide or Semaglutide or Tirzepatide) w/5 (“donut hole” or “do-nut hole” or catastrophic or unaffordab* or (skip* /2 dos*) or (Struggl* /5 Afford*) or (Struggl* /10 Pay*) or (Unable /10 Afford*) or (Unable /10 Pay*) or “Blink Health”)